

REMARKS

Applicants respectfully request entry of the amendments and remarks submitted herein. Claims 1-36 have been canceled without prejudice to continued prosecution and new claims 37-79 have been added. New claims 37-79 correspond to the elected claims 1-22 and 28-36, with the additional recitation of a particular primer sequence or a particular probe sequence in each independent claim. Each particular primer or probe sequence recited in the independent claims also is associated with a length limitation. Support for new claims 37-79 can be found in the originally filed claims and throughout the specification, and support for the length limitation can be found, for example, in the last sentence of the paragraph that bridges pages 6 and 7 and in the last sentence of the first full paragraph on page 7.

Claims 37-79 are currently pending. Reconsideration of the pending application is respectfully requested.

Response to Restriction Requirement

Applicants thank the Examiner for the telephone call of January 18, 2006 regarding restriction of the claims. Applicants hereby affirm the January 18, 2006 provisional election of Group I, claims 1-22 and 28-36.

The Objections to the Specification

The disclosure stands objected to because it contains an embedded hyperlink.

Applicants have amended the specification at pages 17, 19 and 27 to remove the embedded hyperlinks. In view of the amendments herein, Applicants respectfully request that the objection to the specification be withdrawn.

The 35 U.S.C. §112 Rejections

Claim 35 stands rejected under 35 U.S.C. §112, second paragraph, for containing the trademarks/trade names SYBRGreen 1 and SYBRGold.

Applicants have canceled claim 35 and rewritten it as new claim 78. New claim 78 does not recite any trademarks or trade names. In view of new claim 78, Applicants submit that the

rejection of claim 35 under 35 U.S.C. §112, second paragraph, is moot and should not be applied to new claim 78.

The 35 U.S.C. §103 Rejections

Claims 1, 4-9, 11-13, 20-22 and 34-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Telford (WO 02/34771) in view of Bellin et al. (2001, *J. Clin. Microbiol.*, 39:370-374). Claims 2-3, 10, and 14-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Bellin and further in view of Wittwer I (U.S. Patent No. 6,140,054). Claims 16-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Bellin et al. and further in view of Hartley (U.S. Patent No. 5,035,996). Claim 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Bellin et al. and further in view of Bergeron et al. (2000, *New Engl. J. Med.*, 343:175-179). Claim 36 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Telford and Bellin et al. in view of Wittwer II (U.S. Patent No. 6,174,670). Claims 28, 32, and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Belanger et al. (2002, *J. Clin. Micro.*, 40:1436-1440) as evidenced by mcr.com. Claims 28 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Pfeffer et al. (WO 98/48046). Claims 30-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Pfeffer et al. and further in view of Livak et al (U.S. Patent No. 5,538,848). Claims 1-18, 20-22, and 28-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Uhl et al. (U.S. Patent No. 6,593,093). Claim 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Telford in view of Uhl as applied to claims 1-9 and 11-13 above, and further in view of Bergeron et al. (2000, *New England J. Med.*, 343:175-179). Claims 1, 4-9, 11-13, 20-22 and 34-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tettelin et al. (2002, *PNAS USA*, 99:12391-12396) and Genbank Accession Number NC_004368 in view of Bellin et al. Claims 10 and 14-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tettelin and NC_004368 in view of Bellin et al. and further in view of Wittwer I. Claims 16-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tettelin and NC_004368 in view of Bellin et al. and further in view of Hartley (U.S. Patent No. 5,035,996). Claim 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable over

Tettelin and NC_004368 in view of Bellin et al. and further in view of Bergeron et al. Claim 36 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Tettelin and NC_004368 in view of Bellin et al. in view of Wittwer II. Claims 28, 32, and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tettelin and NC_004368 in view of Belanger et al. as evidenced by mcr.com. Claims 28 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tettelin and NC_004368 in view of Pfeffer et al. (WO 98/48046). Claims 30-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tettelin and NC_004368 in view of Pfeffer et al. and further in view of Livak et al (U.S. Patent No. 5,538,848). These rejections are respectfully traversed.

As indicated above, claims 1-36 have been canceled without prejudice to continued prosecution and new claims 37-79 have been submitted. Specifically, new claims 37-79 are method claims that correspond to original claims 1-22 and 28-36 but, as described above, also recite at least one *pts* primer or probe sequence from original claims 2 or 3 along with a length limitation of the specific primer or probe. In view of the claim amendments, the §103 rejections are discussed with respect to the rejection of original claims 2 and 3 as being unpatentable over Telford in view of Bellin and further in view of Wittwer 1 ("Rejection 1") or over Telford in view of Uhl et al. ("Rejection 2").

With respect to Rejection 1, the Examiner asserted that the claimed sequences (SEQ ID NOs:1-4) are found within SEQ ID NO:4465 of Telford and that, because the claims use 'comprising' language, it would have been obvious in view of Bellin and Wittwer 1 to design the specifically claimed primer and probe sequences. As indicated herein, the new claims not only recite a particular primer or probe sequence (e.g., SEQ ID NO:1 - 4) but also require that the primer or probe be no more than 30 nucleotides in length. None of the cited references, alone or in combination, teach or suggest using the particular primer and probe sequences that are now recited in the claims.

With respect to Rejection 2, the new claims are distinguished from Telford and Uhl et al. Applicants note that Uhl et al. is directed toward detecting Group A Streptococcus, while the instant application is directed toward detecting Group B Streptococcus. Furthermore, although the *pts* gene target is used to detect both Group A and Group B Streptococci, the particular primer and probe sequences that are used to detect Group A (the Uhl et al. patent) and Group B

(the instant application) are different. Therefore, there is no teaching or suggestion in either Telford or Uhl et al. to select and use the particular primer and probe sequences that are now recited in each independent claim.

In view of the amendments and remarks herein, Applicants respectfully submit that the rejections of original claims 1-22 and 28-36 under 35 U.S.C. §103(a) are moot and should not be applied to new claims 37-79.

CONCLUSION

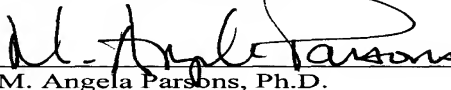
Please apply the amount of \$4,650 for excess claim fees and any other charges or credits to Deposit Account No. 06-1050.

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Respectfully submitted,


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